

PROTECTING THE QUALITY OF THE JUDICIAL PROCESS

Attorney Discipline

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed in January, 1978, to assist the Court of Appeals in administering Local Rule 46(f)-(h). The Committee, composed of seven attorneys, may be called upon to conduct investigations and other proceedings in disciplinary matters involving attorneys admitted to practice before the Court. Pursuant to Local Rule 46(f), in 2003, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. In calendar year 2003, the Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2003, there were 43 disbarments, 33 suspensions, three interim suspensions, three public censures, one private reprimand and ten reinstatements in the Southern District. The Court had 18 cases pending at the end of the calendar year.

In the Eastern District of New York, 56 disciplinary orders were issued in 2003: 20 disbarments, 21 suspensions, seven resignations and eight censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

It came to the attention of the Western District of New York that the Appellate Division, 4th Department, has failed to provide this Court with

notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year's Annual Report.

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District's proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court's federal bar during the year.

In the Northern District of New York, attorney disciplinary actions in calendar year 2003 were handled by Chief Judge Frederick J. Scullin, Jr. There were five disbarments, five attorney suspensions - a stay of suspension was issued for two attorneys, four censures, and seven reinstatements.

Judicial Misconduct

The Judicial Council's Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372©, creates a mechanism for addressing complaints of judicial misconduct or disability. The statute's objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of physical or mental disability."

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit's Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of "illustrative" rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk's Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as "frivolous" complaints and those "directly related" to the merits of a decision or ruling. The Circuit Executive's Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge's dismissal orders. Petitions for review are considered by a four-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge's disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) & ©. The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2003, 63 judicial misconduct complaints were filed in the Second Circuit.